

AMENDMENT NUMBER 1

to

CONTRACT DIR-SDD-1677

between

the State of Texas, acting by and through the Department of Information Resources

and

KRONOS INCORPORATED

This Amendment Number 1 to Contract DIR-SDD-1677 (“Contract”) is between the State of Texas, acting by and through the Department of Information Resources (“DIR”) and Kronos Incorporated (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. Vendor and DIR agree by signature affixed to this Amendment Number 1, Kronos Incorporated signifies and acknowledges acceptance of all terms and conditions as outlined in DIR’s Request for Offer DIR-SDD-TMP-150. The Order of Precedence is outlined in Contract, 1. Introductions, C. Order of Precedence section.

2. **Contract, Section 4. Pricing, B. Customer Discount** is hereby restated in its entirety as follows:

B. Customer Discount

The minimum Customer discount for all products and services will be the percentage off MSRP as specified in Appendix C, Pricing Index. Customer Discount includes the DIR administrative Fee specified in Section 5.

3. **Appendix A, Section 3. Definitions, B. Compliance Check** is hereby restated in its entirety as follows:

B. Compliance Check – an audit of Vendor’s compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract management staff or their designees.

4. **Appendix A, Section 5. Product Terms and conditions, A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)** is hereby restated in its entirety as follows:

A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

2) Upon request, but not later thirty (30) days after request, Vendor shall provide DIR with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to

the VPAT for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).

5. **Appendix A, Section 8. Contract Administration, C. Records and Audits, 3)** is hereby restated in its entirety as follows:

3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) days of receipt.

6. **Appendix A, Section 9. Vendor Responsibilities, T. Deceptive Trade Practices; Unfair Business Practices** is hereby added in its entirety.

T. Deceptive Trade Practices; Unfair Business Practices

(a) Vendor represents and warrants that neither Vendor, nor, to the best of its knowledge, any of its Subcontractors, has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

(b) Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

7. **Appendix A, Section 10. Contract Enforcement, B. Termination, 1) Termination for Non-Appropriation** is hereby restated in its entirety as follows:

1) Termination for Non-Appropriation

a. Termination for Non-Appropriation by Customer

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10)

calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

b. Termination for Non-Appropriation by DIR

DIR may terminate Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

9. Appendix C – Pricing Index is hereby replaced with the attached **Appendix C – Pricing Index**.

All other terms and conditions of the Contract as amended, not specifically modified herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be Amendment Number 1 and then the Contract.

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IN WITNESS WHEREOF, the parties hereby execute this Amendment Number 1 to be effective as of the date of last signature.

KRONOS INCORPORATED

By: _____ Signature on File _____

Name: Mary Lavoie _____

Title: OM Specialist _____

Date: 1/10/12 _____

The State of Texas, acting by and through the Department of Information Resources

By: _____ Signature on File _____

Name: Karen Robinson _____

Title: Executive Director of DIR _____

Date: 1/19/12 _____

Office of
General Counsel: DRBrown 1-18-12 _____